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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Application of

CENTRAL FLORIDA EDUCATIONAL FOUNDATION,
INC.
Union Park, Florida

HISPANIC BROADCAST SYSTEM, INC.
Lake Mary, FL

For Construction Permit, New
Noncommercial, Educational FM Stations

) MM Docket No. 92-33

) File No. BPED-881207MA

) File No. BPED-891128ME

To: The Review Board

REPLY EXCEPTIONS OF HISPANIC BROADCAST SYSTEM, INC.

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REPLY EXCEPTIONS OF HISPANIC BROADCASTING, INC. FEDERAL COMMUNICATIONS COMMISSION
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1. On October 16, 1992, Central Florida Educational Foundation, Inc. ("Central") filed its CONTINGENT EXCEPTIONS TO INITIAL DECISION in the above-captioned proceeding. Central's pleading need be considered only if the Review Board reverses on the 307(b) issue. Further, Hispanic is in the process of reviewing a proposal to specify a new channel which will permit it to amend out of this proceeding. However, the following response is being submitted in the event it becomes necessary.

2. Central seeks a ruling from the Review Board, favoring Central, on the following matters:

- A. Integration of Objectives
- B. Superior Ability to Effectuate Proposals
- C. Past Broadcast Record
- D. Auxiliary Power

The following response is provided, together with comment on other matters:

Integration of Objectives

3. While remarking that this criterion has been criticized for its "vagueness," citing *Real Life Educational Foundation of Baton Rouge, Inc.*, 6 FCC Rcd. 2577 (Rev. Bd. 1991), Central nevertheless seeks credit under this category. Hispanic would merely point out here that, as with the 307(b) preference, no credit should be granted Central here because its stated "objectives" set forth in its Articles of Incorporation are to present "Bible-based" programming. The Commission cannot award credit to Central for its alleged (and admitted) ability to meet its objective of advancing its religious viewpoint. This would run contrary to the Establishment Clause of the U.S. Constitution.

Superior Ability to Effectuate Proposals

4. Central also seeks a preference for its ability to effectuate its proposals. Again, the award of a preference to an applicant whose proposal is to air its specified religious views would run contrary to the U.S. Constitution. Further, as stated by Central, "Central Florida's programs and proposals are based, in some instances, on existing programs...." (Central Exceptions at p. 12). The argument here is that Central can effectuate its proposal because it is already doing it. However, if it is already providing this programming service to the community, why should Central receive credit for its proposed redundancy? Thus, while Hispanic concedes Central's ability to effectuate its proposals, it would argue that no credit should be given for what in a commercial proceeding would require a diversification demerit - not a credit.

Past Broadcast Record

5. Citing the Commission's policy in regard to commercial cases, Central seeks credit for its good past broadcast record. (Central Exceptions at p. 13). However, the Commission does not consider past broadcast record in comparative proceedings unless the applicant first files a motion to enlarge issues in which it presents a *prima facie* case of an "unusually good" record. Since Central did not file the required motion to enlarge, it cannot seek credit at this stage for its past broadcast record. (In any event, the record does not reflect the type of "unusually good" record which would warrant credit under this criterion).

Auxiliary Power

6. Hispanic concedes that Central is entitled to credit for its auxiliary power proposal. However, such credit is minute.

Other Matters

6. In *Pacifica Foundation*, 21 FCC 2d 216, 218 (Rev. Bd. 1970), where as here none of the applicants was a university, the Review Board held that an inquiry should have been made by the parties into "the manner in which the [cultural and] educational objectives meet the needs of the community to be served." Here, Central admits that its proposal is already being provided, in part, over WTLN which is managed by the principals of Central (Central Exceptions at p. 13). Rather than demonstrating a need for this new service, Central has admitted that the service is already being provided.

7. In addition to the normal religious fare, Central proposes to carry Spanish programming during the evening hours (Central Ex. 6), thus admitting the need for Spanish programming. Hispanic, which proposes to devote its entire broadcast day to the Hispanic population, will meet the only need which both applicants have identified and which is not being met by any other FM stations in the market (commercial or noncommercial). (Hispanic Ex. 2-6). Hispanic has demonstrated that its proposed service will meet an identified need for Spanish programming in the market whereas Central has not demonstrated that its proposed religious format will meet an identified need. Therefore, Hispanic should be preferred under the standard comparative issue based on its proposal to meet an identified need in the market.

8. Finally, if the Review Board does consider Central's argument that it should receive credit for its proposed "integration" and "past broadcast record," factors which it has borrowed from the commercial cases, it should also receive a dispositive diversification demerit for the involvement of its principals in the management of another FM radio station in the same market. (Central Exceptions at p. 13).

Conclusion

9. In conclusion, Central is proposing a religious ("Bible-based") station which will be duplicative of station WTLN which its principals already manage in the market. For constitutional reasons, Central should not be awarded a preference over Hispanic for Central's ability to meet its religious objectives. Further, Central clearly has not demonstrated any need for a second religious station run by the same people in the same market. If anything, Central should be assessed a diversification demerit in this proceeding. In contrast, Hispanic proposes to serve the needs of the Hispanic community - which both parties admit is an unserved need. Therefore, if this case is decided on the comparative issue, Hispanic should be declared the winner for its proposal to meet an unserved need of the community.

Respectfully submitted,

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By _____
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CERTIFICATE OF SERVICE

James L. Oyster hereby certifies that he has sent a copy of the foregoing by first class U.S. mail, postage prepaid, or by hand delivery, on or before the 26th day of October, 1992, to the following:

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